

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES THIEL,

Plaintiff,

v.

Case No. 05-60161

THE LIFE INSURANCE COMPANY OF
NORTH AMERICA; AVAYA, INC.
BUSINESS TRAVEL ACCIDENT PLAN;
AVAYA, INC.; and AVAYA, INC.
BUSINESS TRAVEL ACCIDENT PLAN
ADMINISTRATOR,

Honorable John Corbett O'Meara

Defendants.

**ORDER DENYING WITHOUT PREJUDICE
AVAYA DEFENDANTS' AUGUST 8, 2005 MOTION TO DISMISS AND
GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT**

This matter came before the court on the Avaya defendants' August 8, 2005 motion to dismiss. Plaintiff filed a response August 29, 2005; and the Avaya defendants filed a reply September 12, 2005. Oral argument was heard October 6, 2005.

This is an ERISA claim for disability benefits. The Avaya defendants filed a motion to dismiss based on ¶ 7 of the Complaint, in which Plaintiff alleges that Life Insurance Company of New York ("LINA") "has made all of the decisions regarding plaintiff's claim for benefits in this case."

At oral argument, Plaintiff moved to amend the complaint to state a cause of action against the Avaya defendants.

Accordingly, it is hereby **ORDERED** that Plaintiff's motion to amend the complaint is **GRANTED**.

It is further **ORDERED** that the Avaya defendants' motion to dismiss is **DENIED**
WITHOUT PREJUDICE.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: November 14, 2005